

**VICTIM'S RIGHTS — Rights of the parent/guardian of a minor victim —
Revised 4/2010**

In *Lincoln v. Holt*, 215 Ariz. 21, 156 P.3d 438 (App. 2007), the Court held that A.R.S. § 13-4433(H) grants the specified parent/guardian of a minor victim the right to refuse a pretrial interview of themselves. In reaching this conclusion, the Court relied heavily on the language and history of the pertinent statutes.

A.R.S. § 13-4433 provides, in relevant part:

A. Unless the victim consents, the victim shall not be compelled to submit to an interview on any matter, including any charged criminal offense witnessed by the victim . . . that is conducted by the defendant, the defendant's attorney or an agent of the defendant.

...

H. This section applies to the parent or legal guardian of a minor child who exercises victims' rights on behalf of the minor child

Furthermore, A.R.S. § 13-4403(C), which was in place prior to the enactment of § 13-4433(H), provides that if a victim is a minor or vulnerable adult, "the victim's parent, child, or other immediate family member may exercise all of the victim's rights on behalf of the victim." The Legislative Fact Sheet specifically and unequivocally addressed this issue and permitted the specified parent/guardian to refuse an interview.

The Court of Appeals then addressed whether A.R.S. § 13-4433(H) is an unconstitutional modification of the Victims' Bill of Rights. That bill of rights grants a crime victim the right to refuse an interview, deposition or other discovery request by the defendant. See Ariz. Const. art. 2, § 2.1(A)(5). It defines "victim" as "a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other

lawful representative.” *Id.* at § 2.1(C). The Court of Appeals acknowledged that a parent/guardian, as specified in § 13-4433(H), does not fall directly within that definition.

However, § 2.1(D) of the Victims’ Bill of Rights authorizes the legislature “to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section.” The Court held that construing § 13-4433(H) to allow the parent/guardian to refuse an interview did not impermissibly add a new category of victim to the constitutional definition of “victim” set forth in the bill of rights. The Court distinguished *State v. Klein*, 214 Ariz. 205, 150 P.3d 778 (App. 2007), and *State v. Roscoe*, 185 Ariz. 68, 912 P.2d 1297 (1996), because the statutes at issue in those cases narrowed or restricted rights under the Victims’ Bill of Rights. Accordingly, the Court of Appeals held that A.R.S. § 13-4433(H) is an appropriate exercise of the “preserve and protect” clause in § 2.1(D) of the Victims’ Bill of Rights.